who gave evidence as Kurban Hussein was in fact not Kurban Hussein, but an unknown impostor. In the view I take of the case this could not, even if true, be material. Nor are the other allegations in the affidavit material to affect my decision.

Appeal allowed.

AYYAR v. PARAMESWARA IYER.

[O. C. J. (Wilson, J.) March 14, 1953]

[K.L. — Selangor Civil Suit No. 131 of 1952]

Landlord and tenant — Parole monthly tenancy — Assignment.

Ayyamani was the monthly tenant of Iyer. There was no condition against assignment without consent. Ayyamani assigned the tenancy to Sethuraman Chettiar who in turn by agreement sold and transferred the business at the premises to the defendant. The agreement did not specifically assign the tenancy of the premises to the defendant but it provided that as from the date of the agreement the defendant should pay the rent of the premises. The defendant went into possession of the premises and the plaintiff, as administrator of the estate of Iyer, claimed possession on the grounds that the defendant was a trespasser.

Held: the assignment to Sethuraman Chettiar was valid and he was entitled to remain as a monthly tenant until his tenancy was determined; (2) Sethuraman Chettiar had the right to assign his monthly tenancy without anyone's consent; (3) the plaintiff had failed to establish that the defendant was a trespasser.

Case referred to :—

(1) *Eusof Ali & Anor. v. Nyonya Lee Gaik Hooi* Alor Star Civil Appeal No. 29 of 1951 now reported *ante* p. 98.

CIVIL SUIT.

B. J. P. Joaquim (*K. L. Devaser* with him) for the plaintiff.

A. J. Bostock Hill (*M. N. Cumarasami* with him) for the defendant.

Cur. Adv. Vult.

Wilson, J. : — The plaintiff, as administrator of the Estate of L. R. V. Iyer, claims from the defendant possession of premises known as No. 65, Ampang Street, Kuala Lumpur, on the grounds that the defendant was a trespasser. One Ayyamani previously was the monthly tenant of L. R. V. Iyer of the premises in question. L. R. V. Iyer died on the 1st February, 1950. Subsequently, on the 15th day of May, 1950, Ayyamani, by a document, purported to assign the tenancy of the premises to one R. M. Sethuraman Chettiar. For a certain period Meenambal Ammal, one of the widows of the deceased, received from Sethuraman Chettiar the rent of the premises, but later returned some of the rent received, and possibly all of the rent she had received, and refused to recognise Sethuraman Chettiar as the tenant, but it has not been proved that she returned all the rent she had received. There is evidence that previously Meenambal Ammal, at a meeting with two friends of Sethuraman Chettiar in India, agreed to accept and recognise Sethuraman Chettiar as the tenant of the premises. I would record that I think this is probably true, but having regard to the conclusions to which I have come in respect of the legal position, I do not think that this is material.

By an agreement made on the 6th June, 1951, Sethuraman Chettiar agreed to sell and transfer the business carried on at 65, Ampang Street to the defendant. That agreement does not specifically assign the tenancy of the premises to the defendant but it does provide that as from the date of the agreement the defendant should pay the rent of the said premises. Pursuant to the agreement, the defendant went into possession of the premises and is in occupation of them.

In Civil Appeal No. 29 of 1951[1], in the High Court at Alor Star, Briggs, J., had to consider whether a parole monthly tenancy could be lawfully assigned. Having discussed various authorities he stated :—

"There remains the question whether a tenancy from month to month is to be treated as inferior to a tenancy from year to year. I cannot see why it should. If a continuing right to occupy exists, it does not appear to me to matter in principle whether it continues for ten days or ten years."

Then later he said :—

"I hold that the assignment was valid to transfer the benefit of the monthly tenancy."

I agree with Briggs, J., and propose to follow the decision quoted. There is no suggestion that Ayyamani was in any way prohibited from assigning his monthly tenancy without consent. The monthly tenancy was a continuing tenancy unless and until determined. I do not agree with Mr. Joaquim that the assignment of a monthly tenancy is an unequivocal act of abandonment of the tenancy and, indeed, he has not cited any authority for this proposition.

I find the assignment to Sethuraman Chettiar is valid without the consent of the deceased's widow or administrator and that Sethuraman Chettiar was entitled to remain as a monthly tenant until his tenancy was determined. Sethuraman Chettiar also, in my opinion, had the right to assign his monthly tenancy without anyone's consent. It is arguable that he did not assign the tenancy of the premises by the agreement of the 6th June, 1951, but I do not think it is

necessary to decide this point. If he did assign, the defendant is not a trespasser, and if he did not assign, he is still the monthly tenant and has allowed the defendant to go into occupation and the defendant would not be a trespasser.

Mr. Joaquim has argued that the defence put forward in Court was not raised in the statement of defence filed. But the plaintiff, before he can succeed, must show that the defendant is a trespasser, which is denied in the statement of defence, and I think that the defendant was entitled to produce evidence to show that he was not a trespasser. I would add that I think it is quite immaterial that in the letter dated the 17th June, 1952, written by Mr. Cumarasami on behalf of the defendant, to Mr. Devaser on behalf of the plaintiff, it is alleged that the defendant was the tenant of the premises. It may be that he was and is, but that is purely a legal question, and whether or not Mr. Cumarasami at the time of writing the letter thought that he was a tenant does not affect the legal position.

I hold that the defendant is not a trespasser and that the plaintiff has failed to establish that he is a trespasser, and I give judgment for the defendant with costs.

Judgment for the defendant.

MOK POH FUN & ORS. v. PUBLIC PROSECUTOR.

[A. Cr. J. (Pretheroe, J.) April 18, 1953]

[Ipoh — Criminal Appeal No. 102 of 1952]

Common Gaming Houses Enactment, s. 4(i)(c) — Assisting in the management of a place used as a common gaming house.

The three appellants were convicted of the offence of assisting in the management of a place used as a common gaming house contrary to section 4(i)(c) of the Common Gaming Houses Enactment. The facts were not in dispute. The Police, on receipt of information, raided a club in Taiping where a considerable number of Chinese were found gambling in the main room of the club. The 3rd appellant admitted that he was the Secretary of the club, the 1st appellant acting as a banker in a gambling game when the police raided the premises. It was argued on behalf of the 1st and 2nd appellants that there was no evidence to show that either of them was assisting in the management of a common gaming house.

Held: although there was evidence to show that the 1st appellant was assisting to conduct a game of chance, there was no evidence to show he was assisting in the management of the premises; (2) on the evidence, the 1st and 2nd appellants could only be convicted of gaming in a common gaming house.

Case referred to:—

(1) *R. v. Lim Soh Chwee & Anor.* B.C.G.H. 2nd ed. 178.

CRIMINAL APPEAL.

Lim Kheng Kooi for the appellants.

M. G. Neal (Federal Counsel) for the Public Prosecutor.

Cur. Adv. Vult.

Pretheroe, J.: — The three appellants were convicted of the offence of assisting in the management of a place used as a common gaming house contrary to section 4(i)(c) of the Common Gaming Houses Enactment. The first two appellants appealed against their convictions and sentences while the third appellant appealed against sentence only.

Most of the facts were not disputed. The Police received certain information regarding the Sin Wei Kuan Recreation Club at Taiping and, as a result, kept it under observation for a period. Then a raid was conducted and a considerable number of Chinese were found gambling in the main room of that Club.

The third appellant admitted that he was the Secretary of the Club. The first appellant stated that he had been the Honorary Auditor of the Club up to the previous July but that he held no office, honorary or otherwise, at the time of the police raid. His name, however, appears in the list of office bearers seized during the raid as a member of the Committee of that Club. The second appellant admitted being a member of the Club but denied that he held any official position and his name does not appear in the list of office bearers of the Club.

At the time of the police raid it seems clear that a gambling game called "Tow-ngow" was in progress and that first appellant was acting as banker. When the police asked for a drawer beside the banker to be opened the key was produced by second appellant but it is not clear whether he produced it from his person or, as he himself asserted, took it off a nail in the wall.

On this evidence Mr. Lim Kheng Kooi, who represented the three appellants, submitted that there was no evidence to show that either first or second appellant "was assisting in the management" of a common gaming house. He was prepared to admit that they were gambling and, in the case of the first appellant, that he was "taking his turn" as the banker, but this was very different from assisting in the management of the premises. In support of this submission he cited *Rex v. Lim Soh Chwee & Anor.*[1]. (This case is not, I think, reported but the judgment appears at